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UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII
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HAWAIIAN ART NETWORK, LLC and VINCENT K. TYLOR

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

HAWAIIAN ART NETWORK, LLC and VINCENT K. TYLOR, Plaintiffs, vs. MOKU'AINA PROPERTIES, LLC, a Hawaii Limited Liability Company; CHAD WATERS; JOHN DOES 1-10; JANE DOES 1-10; DOE CORPORATIONS 1-10; DOE PARTNERSHIPS 1-10; and DOE ASSOCIATIONS 1-10, Defendants.	CIVIL NO. CV11 00723DAE RLP (Copyright Infringement; Removal or Alteration of Copyright Management Information) COMPLAINT FOR COPYRIGHT INFRINGEMENT AND REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION; EXHIBITS "A"-"C"; SUMMONS

ORIGINAL

COMPLAINT FOR COPYRIGHT INFRINGEMENTS AND REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION

COMES NOW, Plaintiffs HAWAIIAN ART NETWORK, LLC, and VINCENT K. TYLOR, by their attorney, J. Stephen Street, AAL, and for their complaint allege as follows:

PARTIES

1. Plaintiff HAWAIIAN ART NETWORK, LLC ("HAN LLC ") is a Hawaii limited liability company with its principal place of business at 1888 Kalakaua Blvd., Suite C312, Honolulu, Hawai'i 96815.

2. Plaintiff VINCENT K. TYLOR ("Tylor") is a resident of the State of Hawaii.

3. Upon information and belief, Defendant MOKU'AINA PROPERTIES, LLC ("Mokuaina"), is a Domestic Limited Liability Company, doing business in Hawaii.

4. Upon information and belief, Defendant CHAD WATERS ("Waters") is a natural person residing in the State of Hawaii.

5. JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, and DOE ASSOCIATIONS 1-10 are named herein and operating separate hotels or resort facilities under fictitious names for the reason that, after investigation of the facts of this action, said Defendants' true names

and identities are presently unknown to Plaintiffs, except, upon information and belief, that they are connected in some manner with the named Defendants and/or were the agents, servants, employees, employers, representatives, co-venturers, associates, successors or assignees of the named Defendants who may be under a duty, contractually or otherwise, to pay Plaintiffs compensation for loss incurred by the actions or omissions of the named Defendants and/or were in some manner related to the named Defendants and that their "true names, identities, capacity, activities and/or responsibilities" are presently unknown to Plaintiffs or their attorneys. To ascertain the full names and identities of JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10, and DOE ASSOCIATIONS 1-10, Plaintiffs' counsel has investigated the facts alleged herein through inter alia, interview of Plaintiffs and inspection of the records in this matter. When the true names and capacities are ascertained, through appropriate discovery, Plaintiffs shall move to amend this action to state the true names.

JURISDICTION AND VENUE

6. This is an action for preliminary and permanent injunctive relief and damages arising from Defendant Mokuaina's and Defendant Waters' (collectively "Defendants") copyright infringement(s) in violation of the United States Copyright Act, 17 U.S.C. §§ 101-et seq. and for violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1202.

7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

8. Venue is proper in this district under 28 U.S.C. § 1400(a) and 28 U.S.C. §§ 1391(b) and 1391(c).

FACTUAL ALLEGATIONS

9. The photographic works, image nos.: O-23 Waikiki Dusk, M-25 Kaanapali Beach, B-02 Punaluu Black Sand Beach, A-15 Secluded Falls, at issue in this case were created by photographer Vincent K. Tylor, who is represented by Hawaiian Art Network, LLC, which now owns the copyrights to the works by written assignment. The copyrights for the photographic works at issue were registered with the United States Copyright Office as VA 1-696-555 in the name of Vincent K. Tylor. Plaintiffs have exclusive rights and privileges in the photographic works under the United States Copyright Act. True and correct copies of the Certificate of Registration which relates to each of these works is attached hereto as Exhibit "A."

10. The said photographic works were not "work for hire."

11. Vincent K. Tylor incurred substantial time and expense in creating the photographic works.

12. In late 2010, Plaintiffs learned that Defendants used four of said photographic works on their website, www.mokuainaproperties.com, and one of said

photographic works on their website, www.realdealshi.com a total of twenty-seven times as follows:

Image "**O-23 Waikiki Dusk**" used 18 times at:

Page URLs:
http://www.mokuainaproperties.com/mp/
(1 use: Full Page)
http://www.mokuainaproperties.com/mp/category/blog/
(2 uses: Background & ¼ Page)
http://www.mokuainaproperties.com/mp/2011/04/aloha-welcome/
(3 uses: Background, ¼ Page, Spot)
http://www.mokuainaproperties.com/mp/feed/
(1 use: Spot)
http://www.mokuainaproperties.com/Home.html
(1 use: ½ Page)
http://www.realdealshi.com/rdh/
(1 use: ¼ Page)
(The following 9 pages each use the image as a background):
http://www.mokuainaproperties.com/mp/partnerships/
http://www.mokuainaproperties.com/mp/partnerships/bridge-real-estate-hawaii/
http://www.mokuainaproperties.com/mp/partnerships/real-deals-hawaii/
http://www.mokuainaproperties.com/mp/partnerships/mokuaina-vacation-rentals/
http://www.mokuainaproperties.com/mp/partnerships/mokuaina-construction-development/
http://www.mokuainaproperties.com/mp/development/
http://www.mokuainaproperties.com/mp/development/kuauli-estates/
http://www.mokuainaproperties.com/mp/development/the-royal-garden-at-waikiki/
http://www.mokuainaproperties.com/mp/contact/

Image URLs:
http://www.mokuainaproperties.com/mp/wp-content/uploads/2011/04/Oahu.jpg
http://www.mokuainaproperties.com/mp/wp-content/uploads/2011/03/Oahu1.jpg

Image "**M-25 Kaanapali Beach**" used 3 times at:

Page URLs:
http://www.mokuainaproperties.com/mp/
(1 use: Spot)
http://www.mokuainaproperties.com/mp/about/
(1 use: Background)
http://www.mokuainaproperties.com/Home.html

(1 use: Spot)
Image URL:
http://www.mokuainaproperties.com/mp/wp-content/uploads/2011/03/Maui.jpg

Image "**B-02 Punaluu Black Sand Beach**" used 3 times at:

Page URLs:
http://www.mokuainaproperties.com/mp/
(1 use: Spot)
http://www.mokuainaproperties.com/mp/about/who-we-are/
(1 use: Background)
http://www.mokuainaproperties.com/Home.html
(1 use: Spot)
Image URL:
http://www.mokuainaproperties.com/mp/wp-content/uploads/2011/03/Hawaii.jpg

Image "**A-15 Secluded Falls**" used 3 times at:

Page URLs:
http://www.mokuainaproperties.com/mp/
(1 use: Spot)
http://www.mokuainaproperties.com/mp/investments/
(1 use: Background)
http://www.mokuainaproperties.com/Home.html
(1 use: Spot)
Image URL:
http://www.mokuainaproperties.com/mp/wp-content/uploads/2011/03/Kauai.jpg

Said Images were used without obtaining license or consent from Plaintiffs and thus violating Plaintiffs' exclusive right to reproduce, adapt, display, distribute, and/or create derivative works under 17 U.S.C. § 100 et al. True and correct copies of the photographic works registered by Plaintiff Tylor and used without permission on Defendants' website are attached hereto as Exhibit "B". True and correct copies of screenshots of Defendants' infringing uses of the photographic works at their website are attached as Exhibit "C".

13. Plaintiffs' copyrighted photographic works, where they are legitimately available, bear Plaintiff's copyright management information.

14. Upon information and belief, Defendants intentionally removed or altered copyright management information from the photographic works at issue for their uses of those photographic works without the authority of Plaintiffs or the law because the pages on Defendant's websites contain multiple copies of the photographic works in question, with the copyright information in the form of the "Vincent K. Tylor" signature on the original photographic works digitally cropped. A true and correct copy of each of Plaintiffs' photographic works containing the copyright management information and a rendition of the cropping of the photographic works' copyright management information by Defendant are attached hereto as Exhibit "C."

15. Starting on or about April 21, 2011, Plaintiffs attempted to resolve with Defendant the ongoing use of the photographic works in violation of Plaintiffs' copyright, requesting that Defendant pay a retroactive licensing fee for the photographic works used on Defendants' websites and that Defendants cease and desist from using any of Plaintiffs' copyrighted works.

16. Plaintiffs' Attorney was contacted by counsel for Defendant, and exchanged communications.

17. Although Defendants have ceased using the images at the above described website page URL's, Plaintiffs have been unable to resolve the matter with Defendants.

18. Plaintiffs are informed and believe, and on the basis of such belief allege that Defendant Waters, or his agent the website designer that he retained to prepare these websites, knew that he was violating the copyrights of Plaintiffs in said photographic works by placing and using, or authorizing the placement and use of, the photographic works on said websites without making any effort to seek licensing.

19. Upon information and belief, Defendant Waters is the sole member of Moku'aina Properties, LLC, which Defendant owns or owned and/or operates or operated as a domestic limited liability company. Defendant Waters made decisions, either directly or through his agent, website designer, concerning the infringing use of Plaintiffs' photographic work and derived direct and/or indirect benefits from the infringing use of Plaintiffs' photographic works.

20. Upon information and belief, Defendant does business in the State of Hawaii through online booking of rental properties, which can or could be accessed on the Moku'aina Properties, LLC websites and in the operation of the properties.

FIRST CAUSE OF ACTION:
COPYRIGHT INFRINGEMENTS

21. Plaintiffs restate and reallege each of the allegations contained in paragraphs 1-20 as if fully stated herein.

22. Plaintiffs have held all rights, title and interest in the copyrights to the photographic works at issue during the entire period of Defendants' use, the use of which has not been licensed to Defendants.

23. Defendants have misappropriated Plaintiffs' copyrighted photographic works and engaged in unauthorized use and copying of Plaintiffs' photographic works by using Plaintiffs' photographic works on two websites for their own commercial purposes. Defendants' acts constitute copyright infringements under the United States Copyright Act, 17 U.S.C. §§ 101-et.seq.

24. Defendants may continue, unless restrained, to use Plaintiffs' copyrighted photographic works, causing irreparable damage to Plaintiffs for which Plaintiffs have no adequate remedy of law.

25. Defendants' unlawful use of copies of Plaintiffs' original photographic works has diminished the value of the original photographic works by diluting the market and destroying the distinctiveness of the photographic works and their identity as being the exclusive property of Plaintiffs.

26. Defendants' unlawful acts have been and are interfering with and undermining Plaintiffs' ability to market Plaintiffs' own original photographic works,

thereby impairing the value and prejudicing the sale by Plaintiffs of their own photographic works.

27. Plaintiffs are entitled to a temporary and permanent injunction restraining Defendants from engaging in further acts of copyright infringement.

28. Defendants, by their unauthorized appropriation and use of Plaintiffs' original photographic works, have been and are engaging in acts of unfair competition, unlawful appropriation, unjust enrichment, wrongful deception of the purchasing public, and unlawful trading on Plaintiffs' goodwill and the public acceptance of Plaintiffs' original photographic works.

29. Because Defendants used Plaintiffs' copyrighted photographic works without license, infringing the exclusive rights of Plaintiffs as the copyright owner, Plaintiffs are entitled to have the infringing publications and any improperly acquired likenesses or photographic works, however stored or recorded, impounded while this action is pending.

30. As a direct and proximate result of Defendants' wrongful acts, Plaintiffs have suffered and continue to suffer lost profits and damages.

31. Plaintiffs are entitled to recover from Defendants the damages they have sustained as a result of these wrongful acts. Plaintiffs are presently unable to ascertain the full extent of the monetary damages they have suffered by reason of Defendants' acts of copyright infringement.

32. Plaintiffs are further entitled to recover from Defendants any gains, profits, or advantages Defendants have obtained as a result of their wrongful acts. Plaintiff is presently unable to ascertain the full extent of the gains, profits, and advantages Defendants have realized by its acts of copyright infringement.

33. Plaintiffs are entitled to elect to recover from Defendants statutory damages for each of its past and/or continuing violations of Plaintiffs' copyrights.

34. Plaintiffs are further entitled to costs and reasonable attorneys' fees.

SECOND CAUSE OF ACTION: REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION

35. Plaintiffs restate and reallege each of the allegations contained in paragraphs 1-34 as if fully stated herein.

36. Upon information and belief, Defendants have intentionally removed copyright identification information from photographic works used on Defendants' websites without the authority of the copyright owner or the law and knowing, or having reasonable grounds to know, that the removal would induce, enable, facilitate, or conceal infringements of copyright.

37. Defendants' acts constitute a violation under the Digital Millennium Copyright Act, 17 U.S.C. § 1202.

38. Plaintiffs are entitled to a temporary and permanent injunction

to prevent Defendants from engaging in further violations of 17 U.S.C. § 1202.

39. Plaintiffs are entitled to recover from Defendants the actual damages suffered by Plaintiffs and any profits Defendants have obtained as a result of their wrongful acts that are not taken into account in computing the actual damages. Plaintiffs are presently unable to ascertain the full extent of the profits Defendants have realized by its violations of 17 U.S.C. § 1202.

40. Plaintiffs are entitled to elect to recover from Defendants statutory damages for each of their past and/or continuing violations of 17 U.S.C. § 1202.

41. Plaintiffs are further entitled to costs and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs HAWAIIAN ART NETWORK, LLC and VINCENT K. TYLOR pray:

A. That this Honorable Court enter an injunction temporarily and permanently enjoining and restraining Defendants and Defendants' directors, officers, agents, servants, employees, attorneys, and all persons in active concert or participation with Defendants from infringing Plaintiffs' copyrighted photographic works and from violating 17 U.S.C. § 1202;

B. That Defendants be required to pay such damages as Plaintiffs have sustained and any profits Defendant has gained in consequence of Defendants' unlawful acts or, in the alternative, to pay statutory damages pursuant to 17 U.S.C. § 504(c) and 17 U.S.C. § 1203(c);

C. That Defendants be required to pay costs and reasonable attorneys' fees to Plaintiffs pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1203(b);

D. That Plaintiffs be granted such other and further relief as this Honorable Court may deem just and proper.

DATED: Honolulu, Hawaii, 12-1, 2011.

J. STEPHEN STREET, AAL
Attorney for Plaintiffs
HAWAIIAN ART NETWORK, LLC
and VINCENT K. TYLOR